

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Plant Health – Certification Standards for Raspberry and Strawberry Plants

Rule Number(s): 901:5-39-01; and 901:5-41-01

Date: June 28, 2018

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

OAC 901:5-39-01 and 901:5-41-01 has been reviewed in accordance with Chapter 119 of the Revised Code and are being proposed to be rescinded. Currently, the rules regulate and establish the process for the certification of raspberry and strawberry plants, respectively. Certified plants are those that have been inspected to ensure that the plants are free from disease and are of a pure variety. ODA has reviewed the rule and determined that it can be rescinded. ODA typically handles certification through other methods such as a compliance agreements. Further, the certification has not been utilized in a significant number of years.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 927.52, 927.61

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not Applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The certification standards are in place to provide quality assurance to purchasers that the plants are free from diseases and pests which could negatively impact the viability and yield of farm production. ODA, at the request of the industry, typically handles these requests via compliance agreements.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

As stated previously, the certification has not been utilized in a significant number of years. Therefore, the Department has determined that these rules are no longer necessary as the intent of the rules is being fulfilled elsewhere.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The following stakeholders comprise a list of the leaders of several agricultural organizations found within the state of Ohio. Each stakeholder was given a copy of the rules contained in this package and asked to submit comments to the Department. The stakeholders contacted are as follows:

AmericanHort	Gina Zirkle
Ohio Aggregates & Industrial Minerals Assoc.	Patrick Jacomet
Ohio Agribusiness Assoc.	Chris Henney
Ohio Agribusiness Assoc.	Margo Long
Ohio Agribusiness Assoc.	Andrew Allman
Ohio Christmas Tree Assoc.	
Ohio Corn & Wheat	Tadd Nicholson
Ohio Corn & Wheat	John Torres
ODOT	Scott Lucas
ODOT	Terri Barnhart
Ohio Environmental Council	Adam Rissien
Ohio Environmental Council	Jack Shaner
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Larry Antosch
Ohio Farmers Union	Linda Borton
Ohio Farmers Union	Joe Logan
Ohio Forestry Association	Michael Geary
Ohio Forestry Association	John Dorka
Ohio Lawn Care Association	Mark Bennett
Ohio Nursery Landscape Association	Roni Peterson
Ohio Nursery Landscape Association	Belinda Jones
Ohio Seed Improvement Assoc	John Armstrong
Ohio Soybean Council	Kirk Merritt
Ohio Pesticide Applicators for Responsible Regulation	Lonnie Alonso
Ohio Produce Growers Association	Valerie Graham
Ohio Pest Management Association	Melinda Howells
Ohio Pest Management Association	Brian Alonso
Ohio State Bee Keepers	Tim Arbeit

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Ohio Turf Association
Ohio Ecological Food and Farm Association
Environmental Law & Policy Center
United States Department of Agriculture, APHIS PPQ
Ohio State University, Extension Offices
Ohio Department of Natural Resources, Division of Forestry

Brian Laurent
Amalie Lipstreu
Madeline Fleisher

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

No comments were made by the stakeholders.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule?

The rules are based on scientific study and research however, the rules are being rescinded.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Department considered maintaining the rule however, it was decided that the rules were not being utilized. Therefore, the rules are being rescinded.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

This rule is performance based. It requires that for certification certain standards are met. However, it does not specifically state how the standards should be reached.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Department is given the sole regulatory authority through R.C. 927.52 to adopt and amend all rules as they apply to nursery and plant stock.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rule is uniformly applied to raspberry and strawberry plant growers without regard to the type of operation.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

All individuals who sell, offers to sell, or distribute raspberry and strawberry plants within this state or who ship them to other states.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

As required in 927.61 of the Ohio Revised Code, all nursery stock must be inspected and certified prior to sale. Individuals who meet the above description are subject to a licensing fee as stated in R.C. 927.53. Typically, individuals enter into a compliance agreement with the Department rather than the certification outlined in this rule.

c. Quantify the expected adverse impact from the regulation.

The license fee required by R.C. 927.53 is \$100.00 and \$11.00 per acre of intensive production or \$7.00 per acre of field production and expires on December 31st of each year. Individuals must expend marginal time for compliance when requesting inspection by the department. Plants which have not been inspected and certified may not be offered for sale. This may result in loss of some product which contains pests and or viruses as listed in the rule.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

As noted throughout, the rules are being rescinded. Therefore, the Department believes that the decision is justified.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses?

Section 927.61 of the Revised Code requires that all nursery stock be officially inspected and a valid certificate be issued by the Director prior to sale. The Department has accomplished these certifications through compliance agreements rather than the certification outlined in these rules.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable. There are no fines for non-compliance with this rule.

18. What resources are available to assist small businesses with compliance of the regulation?

The Plant Pest Control Section employs eleven specialists throughout the state to assist with compliance of Ohio's and other states regulations on this pest.